

Paper No.

JOHN O' TOOLE
PO BOX 1113
MINNEAPOLIS, MN 55440

In re Patent No. 6,197,355
Issued: March 6, 2001
Application No. 09 392,182
Filed: September 9, 1999
Attorney Docket No. GMI 5183
FOR: METHOD FOR PROCESSING AN
AERATED CONFECTIONERY FOAM ROPE

DECISION GRANTING
PETITION

In re Application of
Zietlow, et al.
Application No. 09 887,702
Filed: March 1, 2001
Attorney Docket No. GMI 5183D1
FOR: METHOD FOR PROCESSING AN
AERATED CONFECTIONERY FOAM ROPE

This is a decision on the petition, filed September 7, 2001, requesting that a Continued Prosecution Application (CPA) deposited March 1, 2001, based on prior application No. 09 392,182 be treated as an application under 37 CFR 1.53(b) and be accorded a filing date of March 1, 2001. The petition was forwarded to the Office of Petitions on February 19, 2002. The Office apologizes for any inconvenience caused by the delay in addressing the present petition.

A request for a CPA based on prior application No. 09 392,182 was submitted on March 1, 2001. The issue fee was paid in the prior application on January 9, 2001 and the prior application issued as Patent No. 6,197,355 on March 6, 2001.

Because the CPA was filed after payment of the issue fee, it is improper and the CPA request cannot be processed as a proper CPA, 37 CFR 1.53(d)(1)(iii)(A). Also, since the prior application has issued as a patent, the CPA request cannot be processed as a proper CPA.

However, the CPA request was filed while the prior application was still pending and was accompanied by a specification, drawings, a copy of the signed declaration filed in the prior application, the filing fee, and a preliminary amendment. Petitioners state that the application was mistakenly filed as a CPA under 37 CFR 1.53(d), when it was intended to be filed under 37 CFR 1.53(b). The present petition requests that the application filed as a CPA under 37 CFR 1.53(d) be treated as a divisional application filed under 37 CFR 1.53(b).

The petition is **granted**.

The divisional application papers filed on March 1, 2001 have been removed from the file of application No. 09 392,182, and have been assigned Application No. 09 887,702. All future correspondence relating to the divisional application should be directed to Application No. 09 887,702.

The \$130.00 petition has been charged to Deposit Account No. 07-0900 as authorized in the petition. The \$710.00 filing fee paid March 1, 2001 will be transferred to the divisional application No. 09 887,702. It appears that a one month extension of time was charged on March 1, 2001. This fee is unnecessary and will be refunded to petitioners' deposit account No. 07-0900.

After mailing of this decision, PTO records will be corrected to show that the \$710.00 filing fee paid on March 1, 2001, was paid in application No. 09 887,702, not in application No. 09 392,182.

The patented file (Application No. 09 392,182; Patent No. 6,197,355) is being forwarded to Files Repository.

Application No. 09 887,702 is being returned to the Office of Initial Patent Examination for further processing as a divisional application filed under 37 CFR 1.53(b), not under 37 CFR 1.53(d), with a filing date of March 1, 2001, using the copy of the specification, drawings and declaration filed on March 1, 2001. The Office of Initial Patent Examination will issue a filing receipt in due course.

Telephone inquiries specific to this matter should be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy